

Exhibit 5

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3
4 SYNGENTA CROP PROTECTION,)
 LLC,)
5)
 Plaintiff,)
6)
 - vs -) No. 1:15-CV-274
7)
 WILLOWOOD, LLC, WILLOWOOD)
8 USA, LLC, WILLOWOOD)
 AZOXYSTROBIN, LLC, and)
9 WILLOWOOD LIMITED,)
)
10 Defendants.)

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14 The deposition of BRAD REICHMAN, a
15 material witness herein, called for examination
16 pursuant to notice and the Federal Rules of Civil
17 Procedure as they pertain to the taking of
18 depositions before Cheryl L. Zeone, CSR, RPR, on
19 Monday, July 25, 2016, at 416 Main Street, Suite
20 1125, Peoria, Illinois, commencing at the hour of
21 9:28 a.m.

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Q. In fact, by the time FMC first shipped
you product in July 2015, you were done with
Willowood, were you not?

7

A. We were able to buy azoxy from
competing companies cheaper than Willowood would
sell us directly.

10

Q. Were you done with Willowood?

11

A. We were buying product on the outside
because Willowood was selling it much cheaper.

13

Q. To whom?

14

A. Out of a plant through other dealers.
So we were able to buy Willowood stuff cheaper on
the outside, which I did not like. They were
selling product very cheaply in the marketplace
to other people.

19

Q. And at some point, did FMC offer to
sell you product -- azoxystrobin product at a
price less than \$90?

22

A. They did.

23

Q. In fact, they offered to sell it to you
at \$80, did they not?

24

1 A. They did. They were getting out of the
2 business completely.

3 Q. And did you purchase more product at
4 \$80 from them?

5 A. I did not. The seeding was over.

6 Q. So this was by the fall?

7 A. I do not remember when he offered, but
8 it was after the seeding was over.

9 [REDACTED]

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1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6 BY MR. SANTHANAM:

7 Q. Can you describe how Willowood priced
8 its products? Was there a method by which they
9 priced their products?

10 A. Willowood is just notorious just to --
11 everything they bring in is that product usually
12 goes way down in value when Willowood brings it.
13 So how they price it I don't know, but it --
14 usually, when Willowood comes in with a product,
15 you know that product is going to the basement
16 floor on pricing.

17 Q. What's your basis for that?

18 A. It's just their track record. You
19 could probably ask anybody in the business and
20 you'll get the same answer.

21 Q. What is Willowood's reputation in the
22 industry?

23 A. Just like that. It's a -- it's a
24 company that when -- like I said, when they bring

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

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Q. So the rebate -- the \$25 rebate that's

24

shown in REI 62, that was applied to the purchase

1 price that you see on REI 61?

2 A. It was taken off the purchase price.

3 Q. So the actual net price that Willowood
4 had offered to you on REI 61 was \$125 minus \$25
5 resulting in \$100 net price; is that right?

6 A. That is correct.

7 Q. That was the net price you were
8 purchasing -- or, Willowood was proposing that
9 you purchase Azoxy 2SC as of October 17, 2014; is
10 that right?

11 A. That's correct.

12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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A. I believe they gave me something off the product. I do not recall the details, but we broke down and, you know, ended up splitting ways, and I was actually buying the product from another source cheaper than what Willowood was selling me directly.

Q. Okay. So you were able to buy AzoxyProp Xtra for cheaper than \$90 from another source to whom Willowood had sold AzoxyProp?

A. That's correct.

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[REDACTED]

If you look at REI 27, do you see that there's an e-mail there from Andy King at Willowood to you dated February 15, 2015?

Do you see that?

A. Yes.

Q. And at the bottom -- and do you recall receiving this e-mail?

A. Yes.

Q. Okay. At the bottom of that e-mail, you know, it reads, Following is the rationale. You have purchased 21,600 gallons of AzoxyProp Xtra at an invoice price of \$90 per gallon.

A. Yes.

Q. Did Reichman actually purchase 21,600 gallons?

A. I don't believe so, no. I think that was what was on a purchase order.

Q. Okay. And it says, We would like to send you 1,080 gallons of Azoxy 2SC to assist with the market prices you are seeing.

Do you see that?

A. Yes.

Q. Do you know what that means?

1 A. He was lowering the price, basically.

2 Q. Okay. So the next bullet on REI 27
3 reads -- this is from Andy King, This would lower
4 your AzoxyProp Xtra net price to \$79.58 based on
5 the invoice price, and \$78.33 based on a retail
6 price of \$140 per gallon on the 12,960 gallons.

7 Do you see that?

8 A. Yes.

9 Q. Was it your understanding that
10 Willowood was providing you with Azoxy 2SC --
11 1,080 gallons of Azoxy 2SC to lower your price of
12 AzoxyProp Xtra?

13 A. That is correct.

14 Q. As of February 15, 2015, Willowood was
15 offering AzoxyProp Xtra, along with other offers,
16 to lower your net price to \$79.58 based on an
17 invoice price and \$78.33 based on a retail price;
18 is that right?

19 A. Yes.

20 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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BY MR. SANTHANAM:

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Q. If you go to -- I just have a couple

1 more questions and I'll let you go, Mr. Reichman.

2 If you go to page REI 3, this is the
3 same as Exhibit 7 Mr. Neuman put in front of you,
4 you had mentioned -- well, Mr. Neuman had asked
5 you about pricing from Cheminova with respect to
6 your e-mail in the middle from July 15, 2015.

7 Do you recall that?

8 A. Yes.

9 Q. And you had indicated that Willowood
10 was selling cheaper to other companies.

11 Do you remember that?

12 A. Yes.

13 Q. Was it your recollection that Willowood
14 was selling cheaper than \$90 to other companies?

15 A. I don't know if it was cheaper than
16 \$90.

17 MR. NEUMAN: Foundation.

18 THE WITNESS: I recall this was a -- I
19 went for a deal, and the company told me I needed
20 to sell it for \$95. I ended up getting the
21 product bought from FMC and not getting the deal.
22 So I ended up carrying the product over for a
23 year or part of a year, anyway.
24

1 BY MR. SANTHANAM:

2 Q. Do you know what price Willowood was
3 selling to other retailers and distributors in or
4 around July 15, 2015?

5 A. I do not know exactly what they were
6 doing. I can just tell you that I was just
7 hearing prices cheaper than \$90.

8 Q. If you go to REI 18, this is also
9 contained in Exhibit 5 that Mr. Neuman had
10 provided you, Mr. Neuman had indicated that or at
11 least pointed you to the e-mail in the middle of
12 REI 18 from you to Andy King dated May 14, 2015.

13 Do you see that?

14 A. Yes.

15 Q. And with respect to this e-mail, you
16 had indicated that you -- it could have been that
17 Syngenta priced above or below what was -- what
18 Willowood was offering as of May 2015; is that
19 right?

20 MR. NEUMAN: Objection, foundation.
21 This AzoxyProp Xtra.

22 THE WITNESS: Can you say that again?
23 I'm sorry.
24

1 BY MR. SANTHANAM:

2 Q. Right. So you say in that e-mail, If
3 you have the demand, please sell it. I'm running
4 into Quilt Xcel way too cheap to make this work.

5 I believe your testimony was that you
6 were finding Quilt Xcel at another entity called
7 Ottawa Plant Food?

8 A. Yes. Which I did not supply those
9 documents and I will to show what we actually
10 bought from them.

11 Q. Okay. The Ottawa Plant facility, you
12 don't recall whether Syngenta was pricing below
13 what Willowood was offering for its AzoxyProp
14 Xtra, correct?

15 A. I believe it was either the same or
16 very close to the same price as AzoxyProp Xtra.
17 So we -- you know, you just -- if they're that
18 close, you just can't sell the generic. The
19 brand name has got more value.

20 Q. Do you have any understanding as to
21 whether Syngenta's price -- strike that.

22 Do you have any understanding as to
23 whether the price that was being offered for
24 Quilt Xcel at Ottawa Plant Food was in response

1 to Willowood's pricing elsewhere in the
2 marketplace?

3 MR. NEUMAN: Objection, foundation.

4 THE WITNESS: I do not know. I really
5 don't know their reasons.

6 BY MR. SANTHANAM:

7 Q. Was Ottawa Plant Food a retailer?

8 A. Yeah.

9 Q. Okay.

10 A. Yes.

11 MR. SANTHANAM: Those are all the
12 questions I have, Mr. Reichman. I appreciate
13 your time.

14 MR. NEUMAN: Let's take a ten-minute
15 break. I have a few questions on redirect, and
16 you'll be out of here soon.

17 11:11 a.m.

18 (Whereupon a recess was taken.)

19 11:24 a.m.

20 MR. SANTHANAM: We're back on the
21 record.

22 BY MR. SANTHANAM:

23 Q. Mr. Reichman, I just had a couple of
24 questions before I turn it over to Mr. Neuman for

1 a few last questions as well.

2 Now, in your dealings with Willowood,
3 did Willowood ever compare the price of Azoxy 2SC
4 to Syngenta's Quadris products?

5 MR. NEUMAN: I'm sorry. One second.
6 Could you read that back, please?

7 Record read as follows: "Now, in your
8 dealings with Willowood, did Willowood ever
9 compare the price of Azoxy 2SC to Syngenta's
10 Quadris products?

11 THE WITNESS: I guess I don't know what
12 they based their pricing on. I don't know how
13 they did it.

14 BY MR. SANTHANAM:

15 Q. Did Willowood ever compare Azoxy 2SC to
16 Quadris and characterize it as an equivalent for
17 Quadris?

18 A. Oh, yes. Yes.

19 Q. Was that -- did Willowood intend its
20 Azoxy 2SC to be a substitute for Quadris in the
21 marketplace?

22 A. Yes.

23 MR. NEUMAN: Objection, form.
24